

§ 23.700

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§ 23.700 Definitions.

As used in this subpart:

Initial Margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

Margin means both Initial Margin and Variation Margin.

Segregate. To segregate two or more items is to keep them in separate accounts, and to avoid combining them in the same transfer between two accounts.

Variation Margin means a payment made by or collateral posted by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

§ 23.701 Notification of right to segregation.

(a) Prior to the execution of each swap transaction that is not submitted for clearing, a swap dealer or major swap participant shall:

(1) Notify each counterparty to such transaction that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with § 23.702 and § 23.703;

(2) Identify one or more custodians, one of which must be a creditworthy non-affiliate and each of which must be a legal entity independent of both the swap dealer or major swap participant and the counterparty, as an acceptable depository for segregated Initial Margin; and

(3) Provide information regarding the price of segregation for each custodian identified in paragraph (a)(2) of this section, to the extent that the swap dealer or major swap participant has such information.

(b) The right referred to in paragraph (a) of this section does not extend to Variation Margin.

(c) The notification referred to in paragraph (a) of this section shall be made to an officer of the counterparty responsible for the management of collateral. If no such party is identified by the counterparty to the swap dealer or

major swap participant, then the notification shall be made to the Chief Risk Officer of the counterparty, or, if there is no such Officer, the Chief Executive Officer, or if none, the highest-level decision-maker for the counterparty.

(d) Prior to confirming the terms of any such swap, the swap dealer or major swap participant shall obtain from the counterparty confirmation of receipt by the person specified in paragraph (c) of this section of the notification specified in paragraph (a) of this section, and an election to require such segregation or not. The swap dealer or major swap participant shall maintain such confirmation and such election as business records pursuant to § 1.31 of this chapter.

(e) Notification pursuant to paragraph (a) of this section to a particular counterparty by a particular swap dealer or major swap participant need only be made once in any calendar year.

(f) A counterparty's election to require segregation of Initial Margin, or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery.

§ 23.702 Requirements for segregated margin.

(a) The custodian of Margin, segregated pursuant to an election under § 23.701, must be a legal entity independent of both the swap dealer or major swap participant and the counterparty.

(b) Initial Margin that is segregated pursuant to an election under § 23.701 must be held in an account segregated for and on behalf of the counterparty, and designated as such. Such an account may, if the swap dealer or major swap participant and the counterparty agree, also hold Variation Margin.

(c) Any agreement for the segregation of Margin pursuant to this section shall be in writing, shall include the custodian as a party, and shall provide that: